

Identities Legislation

8 MAY 1981

Last Friday the Senate Judiciary Subcommittee on Security and Terrorism convened to take testimony on S. 391, the Senate version of the Intelligence Identities Protection Act. Testifying were: Senator John H. Chafee (R., RI), the Bill's chief sponsor; the DCI, accompanied by the Acting DDO and the Legislative Counsel; Richard Willard, Counsel to the Attorney General for Intelligence Policy; Morton Halperin and Jerry Berman, ACLU; and Jack Maury, representing AFIO. Attending in addition to Subcommittee Chairman Jeremiah Denton were Senators Thurmond, East, Leahy, and Biden. The Director's testimony was well received, with the Subcommittee Chairman expressing support for expeditious reporting of the Bill to the full Committee. []

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It was evident that opponents of the Bill are fully cognizant of the fact that they do not have the votes to prevent Senate passage of S. 391. Moreover, based on the types of questions and hypotheticals posed by Senator Biden, it is also apparent that opponents of the legislation are hard-pressed to come up with persuasive and compelling arguments against enactment. []

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Senator Biden argued that enactment of the Bill as currently drafted could prove counterproductive if the key subsection was eventually found to be unconstitutional. He also argued that passage of the Bill in its current form could prevent disclosure of the identities of "double agent moles." During the course of this line of inquiry Senator Biden stated that HPSCI Chairman Boland had received a letter from Philip Heymann, former Chief of the Criminal Division of the Department of Justice, on behalf of himself, Professor Anton Scalia, and Attorney Floyd Abrams reiterating constitutional concerns with the key provision of the Bill and suggesting a new approach. We have obtained a copy of this letter and the draft provision, which, on preliminary analysis, does not appear to be an attractive alternative to the current House or Senate versions. []

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